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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Robert W. Monster, an individual,

Plaintiff(s),

v.

Ganeden Biotech, Inc., an Ohio Corporation
and Kerry Luxembourg S.à.r.l., a
Luxembourg Corporation,

Defendants.

CASE NO. _____
[to be filled in by Clerk's Office]

COMPLAINT FOR A CIVIL CASE

Jury Trial: ☒ Yes ☐ No

Plaintiff Robert W, Monster, an individual and resident of Washington, USA ("Monster"),
for his Complaint against Defendant Ganeden Biotech, Inc. (hereinafter "Ganeden") and Kerry
Luxembourg S.à.r.l., (hereinafter "Kerry") alleges as follows:

I. THE PARTIES TO THIS COMPLAINT

1. Plaintiff Monster is an individual and a citizen of Washington located at 3832
234th Ave SE, Sammamish, WA 98074, USA, with a telephone number of (888) 894-
9026.

2. Upon information and belief, Defendant Kerry is a corporation organized and

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existing under the laws of the Country of Luxembourg having a principal place of business at 17 rue Antoine Jans, L-1820 Luxembourg, Luxembourg.

3. Upon information and belief, Defendant Ganeden is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 5800 Landerbrook Dr Ste 300., Cleveland, OH 44124-4083, USA, with a telephone number of (888) 894-9026.

II. BASIS FOR JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper under 28 U.S.C. § 1331, § 1338 and § 2201 and 15 U.S.C. § 1121 because this action involves a federal question arising under 15 U.S.C. § 1114(2)(D)(iv) and (v), and 15 U.S.C. § 1125(d).

5. This Court has personal jurisdiction over BC30.com because Defendants Ganeden and Kerry expressly agreed to submit to the Court's personal jurisdiction. Specifically, Defendants Ganeden and Kerry filed a UDRP Complaint in which they agreed to submit to personal jurisdiction in "the location of the principal office of the concerned registrar" with respect to any challenge to the decision of the UDRP panel. The domain name <bc30.com> is registered with Epik.com, Incorporated, (the "Registrar"), a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 3832 234th ave SE, Sammamish, WA 98075, USA. Because the concerned Registrar's principal office is in the State of Washington, Defendants Ganeden and Kerry have expressly consented to personal jurisdiction in the State of Washington.

6. Venue is proper under 28 U.S.C. § 1391(b) and § 1391(c)(2).

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III. INTRODUCTION

7. Monster brings this action to stay the transfer of the <bc30.com> domain name to Defendants Ganeden and Kerry, to recover damages against Ganeden and Kerry for reverse domain name hijacking, and to obtain a declaration of lawful use of the domain name <bc30.com> under the Anti-Cybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1114 (2)(D), and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

8. As set forth in more detail below, the <bc30.com> domain name incorporates a generic term, “BC”, a type of bacteria called “Bacillus coagulans.” It is used similarly to lactobacillus and other probiotics as “beneficial” bacteria. “BC30” is commonly used and descriptive wording in the probiotics industry which identifies a type of bacteria contained in Ganeden’s bacteria related goods. Such a term is generic for bacteria and thus not protectable as a trademark for bacteria.

9. Additionally, the domain name <bc30.com> consists of the LLNN.com format meaning it incorporates two letters followed by two numbers, a common domain name configuration with inherent value and popular with domain name buyers and sellers. The term “BC30” is also not distinctive for bacteria nor was it distinctive for bacteria at the time the domain name was registered. Instead, the term is so generic as to be unprotectable as it could easily refer to a number of other terms including the year 30 B.C. and countless other examples, for example BC 3.0, none of which are identical to, confusingly similar to, nor dilutive of any mark belonging to Ganeden or Kerry when the domain name was first registered in 2011. Monster lawfully acquired the domain name with no knowledge of Defendant Ganeden or Defendant Kerry, has legitimate interests in respect of the domain name, and has consistently acted in good faith.

10. Ganeden and Kerry have together claimed exclusive rights to the term “BC30” for goods related to the generic product bacteria but because BC and 30 are generic for bacteria and related

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1 goods, Ganeden and Kerry have no exclusive rights to that name or any other common term such
2 as BC or Bacillus Coagulans for bacteria.

3 11. In proceedings under the Uniform Domain-Name Dispute Resolution Policy (“UDRP”)
4 of the Internet Corporation for Assigned Names and Numbers (“ICANN”), Ganeden and Kerry
5 knowingly provided the UDRP panel with materially false, incomplete, and misleading
6 information in an effort hijack the <bc30.com> domain name from Monster. Ganeden and Kerry
7 knowingly and materially misrepresented that the <bc30.com> domain was identical to,
8 confusingly similar to, or dilutive of a mark that exclusively belonged to Ganeden and Kerry as
9 early as 2008. Ganeden and Kerry’s material misrepresentations caused the UDRP panel to order
10 the transfer of the domain name to Kerry. Accordingly, Monster asks for a declaration of lawful
11 use of the domain name, injunctive relief prohibiting the transfer of the domain name to Kerry,
12 and for damages caused by Kerry’s reverse hijacking.

13 **IV. BACKGROUND**

14 12. The domain name <bc30.com> is currently registered with the Registrar Epik.com, Inc.
15 where it was first registered on June 2, 2011 by a client of Epik, Inc.

16 13. On July 15, 2012, after the customary grace period ended, Monster acquired the rights to
17 the domain name.

18 14. Robert W Monster (“Monster”), has maintain the <bc30.com> domain name at registrar
19 Epik, Inc since then accruing at least 8 years of renewal fees.

20 15. As of February 28th, 2020, Monster owns and has used the <bc30.com > domain name in
21 good faith since its registration on June 2, 2011.

22 16. Monster has developed a large portfolio of domain names incorporating common words,
23 acronyms, generic dictionary words, phrases, topics, and geo-locations, some of which have been
24

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1 the subject of inquiries by third parties wishing to purchase such domain names for their own
2 use.

3 17. As a user and seller of generic and descriptive domain names, Monster owns and operates
4 numerous domain names and has a legitimate business interest in owning and operating generic
5 and descriptive domain names along with their associated websites.

6 18. Monster does not send outbound emails, call third parties, or make any other outbound
7 communication unless he receives an inquiry first initiated by an inquiring party. Monster never
8 initiated contact with Ganeden or Kerry about the domain name <bc30.com> or about any other
9 domain names.

10 19. Monster had no knowledge of Ganeden or Kerry at the time <bc30.com> was first
11 registered nor any knowledge of Ganeden or Kerry when the domain was acquired by Monster.

12 20. At the time of the registration of the domain name <bc30.com>, Ganeden or Kerry had
13 no common law or federal trademark rights to the term “bc30” for any goods or services related
14 to bacteria or bacteria related services.

15 21. As of the date of the filing of this Complaint, Monster registered, used and
16 continues to use the <bc30.com> domain name in good faith and its current and past use was and
17 continues to be a bona fide use.

18 22. On Oct. 13, 2010, Ganeden filed with the U.S. Patent & Trademark Office Application
19 (hereinafter the “USPTO”) Serial No. 85151721 to register the mark “BC30” on the Principal
20 Register under Section 1(b) intent-to-use filing basis in International Class 1 for “bacteria used in
21 the manufacture of foods and nutritional supplements.”

22 23. The term “BC” stands for a type of bacteria called “Bacillus coagulans” and “30” referred
23 to a strain of the bacteria. A strain is a genetic variant or subtype of a microorganism (e.g., virus
24 or bacterium or fungus).

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24. Ganeden failed to disclose the fact that term “BC” stands for a type of bacteria called “Bacillus coagulans” to the USPTO when they filed their application for trademark registration for the term “BC30”.

25. On Dec. 07, 2010, the USPTO Examiner assigned to examine this application requested information as to the significance of the term “BC30” and Ganeden did not disclose to the Examiner that “BC” was a generic term for “Bacillus coagulans” or that “BC30” was a strain of “Bacillus coagulans.” Instead of responding to the Examiner stating the significance of “BC30”, Ganeden’s representatives referred the Examiner to Ganeden’s response in another trademark application, Application Serial Number 77677109 in which the Examiner sent an Office Action dated April 15, 2009 requiring the term “BC30” for the mark “Ganeden BC30 PROBIOTIC POWERED BY DIGESTIVE & IMMUNE HEALTH” to be disclaimed for being generic of the goods.

26. In that April 15, 2009 Office Action, the Examiner required responses to the following questions:

“INFORMATION REQUIRED

Applicant must explain whether “BC30” has any meaning or significance in the industry in which the goods are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. See 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

1) Does BC30 identify a particular bacterial strain?

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2) Is applicant is the only source of the particular bacterial strain identified in Class 1 of the application and/or used as an ingredient by applicant in its Class 5 goods, and if not, what other sources exist of this particular bacterial strain?

3) Has this particular bacterial strain has ever been the subject of a patent in any country? Provide all relevant details of any such patents.

4) By what other names is this particular bacterial strain known?"

27. In the response to that Office Action, Ganeden failed to answer each and every of the Examiner's questions. The Examiner made two notations to the file on 6/11/2011 indicating only "[s]ee Reg. No. 3962293 for information regarding significance of mark" but, in that registration, (U.S. Trademark Reg. No. 3962293,) the USPTO Examining Attorney required that the "BC30" component of the mark be disclaimed stating that "BC30" is merely descriptive of the type of bacteria contained in Applicant's goods. In that application, Applicant responded that the term "BC30" was not used alone but as a part of an overall trademark and thus should not be disclaimed. Specially, Ganeden stated "Applicant's goods contain a strain of bacteria referred to as *Bacillus coagulans* GBI-30 (ATCC Designation Number PTA-6086)" and the evidence showed that "the designation 'BC30' is known by third-parties as a component of Applicant's overall trademark" and "not as a description of a bacteria strain" unlike the "BC30" mark registration wherein "BC30" was the sole trademark claimed for bacteria.

28. Ganeden never informed the USPTO Examiner of the significance of the term "BC30" in relation to its products even though the application for registration was now just for "BC30" and not a component of another longer "overall" trademark as was the case in the previous application.

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29. This aforementioned lack of disclosure by Ganeden that the “BC30” mark as a whole (and not part of a longer term or mark) had significance for bacteria constituted fraud on the U.S. Patent & Trademark Office.

30. On January 08, 2013, Ganeden filed with the U.S. Patent & Trademark Office a Statement of Use under 15 U.S.C. § 1051(d), which also included a sworn declaration signed under penalty of perjury by Attorney Michael A. Marrero, counsel for Defendant, that the mark BC30 was “first used in commerce at least as early as 03/19/2007, and is now in use in such commerce.” The specimen of use submitted by Ganeden with this declaration did not show the mark as BC30, but as a different mark “GANEDEN BC30 PROBIOTIC POWERED BY DIGESTIVE & IMMUNE.”

31. Mr. Marrero further swore under penalty of perjury:

[T]he applicant or the applicant’s related company or licensee is using the mark in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified, and such use by the applicant's related company or licensee inures to the benefit of the applicant....The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

32. Based on the lack of representations by Ganeden that “BC30” as a whole had significance or any meaning relating to bacteria and the non-conforming specimen of use showing “GANEDEN BC30 PROBIOTIC POWERED BY DIGESTIVE & IMMUNE.”

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1 Instead of “BC30”, the mark was subsequently registered in Reg. No. 4396539 on September
2 03, 2013.

3 33. On information and belief, such statements were false at the time they were made by
4 Ganeden.

5 34. On information and belief, Ganeden knew that such statements were false at the time they
6 were made.

7 35. On information and belief, Ganeden knowingly made such false statements coupled with
8 the lack of disclosure of the relevance of “BC30” in regarding to bacteria in order to induce the
9 U.S. Patent & Trademark Office to issue a certificate of registration.

10 36. Insofar as the aforementioned false statements, lack or disclosure and lack of candor were
11 knowingly made, such statements constitute fraud on the U.S. Patent & Trademark Office.

12 37. On July 11, 2019, Ganeden filed a Combined Declaration of Use and Incontestability
13 under Sections 8 & 15 for the 4396539 Registration for “BC30”, which also included a sworn
14 declaration signed under penalty of perjury by Lanny M. Schimmel, “Vice President and
15 Secretary” for Ganeden, that “the mark is in use in commerce on or in connection with the goods
16 identified above, as evidenced by the attached specimen(s),” and that “[t] he specimen(s) shows
17 the mark as currently used in commerce on or in connection with the goods.”

18 38. The specimen submitted with the Combined Declaration of Use and Incontestability
19 under Sections 8 & 15 did not show the mark “BC30” alone but the mark “GANEDEN BC30
20 PROBIOTIC POWERED BY DIGESTIVE & IMMUNE.”

21 39. Mr. Schimmel further swore under penalty of perjury:

- 22 • Unless the owner has specifically claimed excusable nonuse, the mark is in use in
23 commerce on or in connection with the goods identified above, as evidenced by the
24 attached specimen(s).

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- 1 • The specimen(s) shows the mark as currently used in commerce on or in
- 2 connection with the goods.
- 3 • The mark has been in continuous use in commerce for five consecutive years after
- 4 the date of registration, or the date of publication under 15 U.S.C. § 1062(c), and is still
- 5 in use in commerce on or in connection with all goods listed in the existing registration.
- 6 • There has been no final decision adverse to the owner's claim of ownership of
- 7 such mark for such goods, or to the owner's right to register the same or to keep the same
- 8 on the register.
- 9 • There is no proceeding involving said rights pending and not finally disposed of
- 10 either in the United States Patent and Trademark Office or in a court.
- 11 • To the best of the signatory's knowledge, information, and belief, formed after an
- 12 inquiry reasonable under the circumstances, the allegations and other factual contentions
- 13 made above have evidentiary support.
- 14 • The signatory being warned that willful false statements and the like are
- 15 punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such
- 16 willful false statements and the like may jeopardize the validity of this submission,
- 17 declares that all statements made of his/her own knowledge are true and all statements
- 18 made on information and belief are believed to be true.
- 19 40. On information and belief, such statements were false at the time they were made.
- 20 41. On information and belief, Ganeden knew such statements were false at the time they
- 21 were made.
- 22 42. Insofar as the aforementioned false statements were knowingly made, such statements
- 23 constitute fraud on the U.S. Patent & Trademark Office.
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1 43. On information and belief, as of July 11, 2019, Ganeden was not using the mark BC30 in
2 commerce the Congress may regulate in connection with bacteria.

3 44. On information and belief, Ganeden either no longer uses or has never used the BC30
4 mark alone in connection with bacteria in interstate, international, or other commerce which
5 Congress may regulate.

6 45. On information and belief, Ganeden knowingly made such false statements in order to
7 induce the U.S. Patent & Trademark Office to accept Ganeden's Combined Section 8 and 15
8 affidavit.

9 46. Insofar as the aforementioned false statements were knowingly made, such statements
10 constitute fraud on the U.S. Patent & Trademark Office.

11 47. In filing a Section 8 affidavit, Ganeden committed its second act of fraud on the U.S.
12 Patent & Trademark Office.

13 48. In filing a Section 15 affidavit, Ganeden committed its third act of fraud on the U.S.
14 Patent & Trademark Office.

15 49. For the foregoing reasons, the U.S. Patent & Trademark Office would have never issued
16 the 4396539 Registration for the term BC30—or maintained the registration—but for the
17 knowingly fraudulent representations made by Ganeden to the U.S. Patent & Trademark Office
18 in its Sections 8 and 15 affidavits.

19 50. Ganeden's multiple acts of fraud on the U.S. Patent & Trademark Office warrant
20 cancellation of Ganeden's 4396539 Registration.

21 51. Ganeden's non-use of its mark in commerce that Congress may regulate is sufficient
22 grounds—alone—to cancel the 4396539 Registration.

23 52. In relation to bacteria, the term "BC30" is generic. Similarly, Plaintiff Monster's domain
24 name <bc30.com> is comprised of a LLNN.com format (meaning it incorporates two letters

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1 followed by two numbers.) The term is descriptive of a number of terms including the year 30
2 B.C. as well as countless other uses of the term, for example BC 3.0. This term in the domain
3 name <bc30.com> is common, generic, and descriptive of goods that include electronic
4 component names and model numbers, health equipment, power component part numbers, bank
5 note counters, as well as a number of different services.

6 53. Monster has not used the term “bc30” as a mark to indicate the source of any goods or
7 services in conjunction with the domain name <bc30.com>. As such, no likelihood of confusion
8 exists between Monster and any mark belonging to a third party including, in particular,
9 Ganeden’s asserted mark “BC30”.

10 54. The registration and trade in domain names containing generic words constitutes a bona
11 fide use of such generic or descriptive domain names.

12 55. Further, the one word term “bc30” was not coined by Ganeden or Kerry; rather, it is a
13 common term used by numerous third parties in descriptive manners to indicate a strain of
14 *Bacillus coagulans*.

15 56. Ganeden and Kerry have also claimed exclusive rights to the term “bc30” for their goods
16 and services based on their alleged use of the name and single term “bc30” continuously in
17 relation to its goods and services since at least 2008.

18 57. Ganeden and Kerry alleged in the UDRP Complaint that Ganeden registered the domain
19 ganedenbc30.com on October 20, 2006, and that Ganeden has continuously operated a website at
20 that domain.

21 58. On October 23, 2019, an entity called Domain Agents contacted Monster by email as a
22 broker with an offer to purchase <bc30.com> domain name on behalf of an unnamed party that
23 was later discovered to be Ganeden and/or Kerry. Domain Agents presented itself as a
24 negotiation platform that offers safe, secure and neutral place for buyers and sellers to negotiate

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1 and they did not disclose their client was Ganeden and/or Kerry. Moreover, the email did not
2 have any metadata making it impossible to know the identity of the offer was from the same
3 person that made an offer a year prior to this offer, nor did it disclose where they were from or
4 any other information about the organization making the offer.

5 59. On October 25, 2019, Monster received another e-mail from Eric McKegney, a broker
6 from Domain Agents, offering \$4200 for the same domain but Domain Agents failed to disclose
7 that their client was Ganeden and/or Kerry. Due to the fact there were multiple offers from the
8 said Domain Agents entity, and because both emails failed to disclose that Domain Agents'
9 client was Ganeden and/or Kerry, Monster had no sense of whether he was dealing with one
10 buyer or multiple buyers.

11 60. In both these communications initiated by Domain Agents with Monster, Ganeden and
12 Kerry as well as their agent Domain Agents purposefully and willfully did not disclose that
13 Ganeden and/or Kerry was the prospective buyer.

14 61. In its submissions to the WIPO panel, Ganeden and Kerry together knowingly and
15 materially misrepresented their alleged use of the "BC30" term alone or in conjunction with any
16 other mark for bacteria related goods going back to 2006, before the date of the registration of
17 the domain name <bc30.com>.

18 62. Ganeden and Kerry made these statements of alleged use knowing that they were false
19 and would likely mislead the arbitration panel resulting in a decision against Monster.

20 63. Ganeden and Kerry further misrepresented the factual background between the parties to
21 show bad faith on the part of Monster.

22 64. Additionally, Ganeden waited until the year 2013, over 7 years from the date that use was
23 first alleged, to secure a United States registration for a trademark for the term "BC30" falsely
24 claiming exclusive use of the term "BC30" with its services from at least 2006.

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65. Further, Ganeden and Kerry waited 13 years from the alleged date of first use to file a complaint under the UDRP to gain a transfer of the domain name <bc30.com>.

66. Ganeden and Kerry's purposeful and undue delay in filing its UDRP action therefore barred any relief under the doctrine of laches.

67. On February 13, 2020, the arbitration panel in the UDRP proceeding issued its ruling in favor of Ganeden and Kerry. The panel's decision was based on Ganeden and Kerry's misrepresentations that the <bc30.com> domain name is identical or confusingly similar to a trademark or service in the mark in which Ganeden and Kerry have rights at least as early as 2006. On February 19, 2020 the Registrar, the registrant, Monster, Ganeden and Kerry were notified by WIPO of the panel's decision.

68. Under ICANN Rule 4(k), the Registrar is required to allow 10 business days after the date the decision is transmitted to the parties. Rule 4.k. states: "k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown

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1 in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If
2 we receive such documentation within the ten (10) business day period, we will not implement
3 the Administrative Panel's decision, and we will take no further action, until we receive (i)
4 evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that
5 your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court
6 dismissing your lawsuit or ordering that you do not have the right to continue to use your domain
7 name.”

8 69. This complaint is being filed within the 10 business day period after the date the
9 arbitration decision was transmitted to the parties, on February 19, 2020.

10 **V. COUNT 1**

11 **(Declaration under the Anticybersquatting Consumer Protection Act)**

12 70. Monster hereby incorporates the allegations of paragraphs 1 through 69 as if set forth
13 here in full.

14 71. Monster's registration and use of the <bc30.com> domain name, a non distinctive term in
15 relation to bacteria, does not violate federal trademark law and is wholly permissible under both
16 federal and state trademark laws.

17 72. In connection with the registration of the domain name <bc30.com> in June of 2011,
18 Monster had no bad faith intent to profit from Ganeden's or Kerry's non-existent trademark
19 rights in the term “BC30” for any product or service, as contemplated by 15 U.S.C. §
20 1125(d)(1)(A)(i).

21 73. Neither Ganeden or Kerry had rights in the mark “BC30” as of the registration date of the
22 domain name <bc30.com>, and as such, Monster could not have had any intent to divert
23 consumers from Ganeden's or Kerry's online location to a site that could harm any goodwill
24 represented by Ganeden's or Kerry's non-existent mark, either for commercial gain or with the

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1 intent to tarnish or disparage the non-existent mark, by creating a likelihood of confusion as to
2 the source, sponsorship, affiliation, or endorsement of the site.

3 74. Monster has provided no misleading contact information when applying for the
4 registration of the domain name, nor has he failed to maintain accurate contact information.

5 75. The <bc30.com> domain name contains no term which is identical or confusingly similar
6 to marks of others that were distinctive at the time of registration of the domain name, nor was
7 the registration of the domain name dilutive of famous marks that were famous at the time of
8 registration.

9 76. The <bc30.com> domain name contains no mark that is either distinctive or famous
10 within the meaning of 15 U.S.C. § 1125(c).

11 77. At the time of the registration, the domain name <bc30.com> was not identical,
12 confusingly similar to, or dilutive of any mark belonging to Ganeden's or Kerry's marks, as
13 contemplated by 15 U.S.C. § 1125(d)(1)(A)(ii).

14 78. As required by 15 U.S.C. § 1114(2)(D)(v), Monster has given notice to Ganeden and
15 Kerry of Monster's intent to file an action to establish that its registration and use of the domain
16 name <bc30.com> was not and is not unlawful under the Anticybersquatting Consumer
17 Protection Act.

18 79. A dispute exists between Monster, Ganeden and Kerry concerning Monster's right to
19 register and use the domain name <bc30.com>. As a consequence thereof, an actual and
20 justiciable controversy exists between Monster, Ganeden and Kerry.

21 80. Monster seeks a declaration that its registration and use of <bc30.com> is lawful and that
22 the UDRP panel's decision is incorrect, void and contrary to law.

23 81. Monster is and will be irreparably harmed if the <bc30.com> domain is transferred to
24 Ganeden, Kerry or any third party designated by Ganeden or Kerry.

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VI. COUNT 2

(Reverse Domain Name Hijacking)

82. Monster hereby incorporates the allegations of paragraphs 1 through 81 as if set forth here in full.

83. Ganeden and Kerry initiated the UDRP proceeding against Monster in a bad faith effort to deprive Monster of the <bc30.com> domain name when Ganeden and Kerry had no right to the domain name.

84. Ganeden and Kerry knowingly provided the UDRP panel with false, incomplete, and misleading information in connection with its effort to gain control over the <bc30.com> domain name.

85. The UDRP panel's decision in favor of Ganeden and Kerry was based on Ganeden's and Kerry's knowing and material misrepresentation that the <bc30.com> domain name is identical or confusingly similar to a trademark or service mark in which Kerry had rights as of the date of the registration of the domain name <bc30.com>.

86. Ganeden's and Kerry's conduct was knowing, intentional, and improper and caused Monster to suffer damages that will be established at trial.

VII. COUNT 3

(Cancellation for Fraud On U.S. Patent & Trademark Office Under 15 U.S.C. § 1119, 1120)

87. Monster repeats and realleges Paragraphs 1 through 86 of this Complaint as if fully set forth herein.

88. Ganeden's acts as complained of herein constitute procurement and maintenance of a registration in the U.S. Patent & Trademark Office for the mark BC30 by a false or fraudulent declaration or representation in writing in violation of 15 U.S.C. § 1120.

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89. Ganeden committed fraud in the procurement and maintenance of the 4396539 Registration by knowingly, with the intent to deceive the USPTO, making material misrepresentations that it was using the BC30 mark in commerce that Congress may regulate in connection with bacteria related products as of March 19, 2007, continued to use the mark in commerce, and continuously used the mark in commerce for five (5) consecutive years after the date of registration, when in fact, no such use was taking place.

90. The issuance and maintenance of the fraudulently procured registration for the mark BC30 has caused injury and damage to Monster.

91. Monster has sustained and is entitled to recover actual and treble damages, attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117, 1120 and injunctive relief pursuant to 15 U.S.C. § 1116.

VII. RELIEF REQUESTED

Wherefore, Monster requests that this Court enter judgment:

A. declaring that Monster's registration and use of the domain name <bc30.com> is not unlawful under the Anticybersquatting Consumer Protection Act;

B. declaring that Monster's registration and use of the domain name <bc30.com> is lawful;

C. declaring that Monster is not required to transfer the registration for the domain name <bc30.com> to Kerry;

D. declaring that any transfer by the Registrar before the 10 business day window after the arbitration decision was transmitted to the parties is null and void and any such transfer be immediately reversed;

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1 E. entering a permanent injunction enjoining the Registrar from transferring
2 the <bc30.com> domain name to Kerry;

3 F. entering a permanent injunction enjoining Kerry not to accept a transfer of
4 the domain name <bc30.com> or claiming ownership thereof;

5 G. awarding Monster its damages caused by Kerry's knowing and material
6 misrepresentation that the <bc30.com> domain name is identical or confusingly similar to a
7 trademark or service mark in which Kerry had rights as of the registration date of the domain
8 name <bc30.com>;

9 H. awarding Monster his reasonable costs and attorneys' fees;

10 I. awarding Monster statutory damages under 15 U.S.C. § 1117;

11 J. Order the Commissioner of Trademarks to cancel the 4396539 Registration for
12 all goods based any and/or all of the following:

13 Fraud on the U.S. Patent & Trademark Office in the filing of Defendant's initial
14 application;

15 Fraud on the U.S. Patent & Trademark Office in the filing of Defendant's Section 8
16 affidavit;

17 Fraud on the U.S. Patent & Trademark Office in the filing of Defendant's Section 15
18 affidavit; and

19 Non-use of Defendant's trademark in commerce that Congress may regulate; and

20 Grant any such other and further relief as this Court may deem just and proper.

21 **VIII. CERTIFICATION AND CLOSING**

22 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my
23 knowledge, information, and belief that this complaint: (1) is not being presented for an improper
24 purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

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(2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

3/4/2020

Date of signing:

Signature of Plaintiff

DocuSigned by:

Robert Monster

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Printed Name of Plaintiff

ROBERT W. MONSTER